

United States District Court  
Western District of Virginia

CLERK'S OFFICE U.S. DISTRICT COURT  
AT ABINGDON, VA  
FILED

MAY 21 2020

JULIA C. DUDLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

JAMES NICHOLAS HOWINGTON

PETITIONER, )

V. ) No. DVAW-11-8-CR-000025-06

UNITED STATES OF AMERICA ) Honorable Judge James P. Jones

RESPONDENT )

Motion for Compassionate Release/Reduction in Sentence

Before the court is petitioner's pro se motion for compassionate release/reduction in sentence under 18 U.S.C. § 3582 (c) (1) (a).

1. On motion of the director of the B.O.P., a sentencing court under 18 U.S.C. § 3582 (c) (1) (a) may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Act of 1989. The Bureau uses the 18 U.S.C. § (c) (1) (a) in particularly extraordinary and

compelling circumstances which could not have been foreseen by the court at sentencing.

2. Extraordinary And Compelling Circumstances

As provided in the First Step Act, for compelling and extraordinary circumstances, I am seeking release due to the current Pandemic of the Coronavirus/Covid -19. Currently, there have been 4189 inmates infected and 399 guards, with 48 deaths as of May 12, 2020.

3. I strongly feel that the B.O.P. is not equipped nor prepared to safely deal with this pending pandemic. There are no bleach sanitizers, no alcohol based (60%) hand sanitizer stations nor any sold on Commissary as highly recommended by the CDC. We have small 4' walkways between our dorms/cubicles and between our bunks in the "R" Unit I currently reside in. This unit houses 100 inmates which prevents all spacing and mitigation requirements of the CDC. The "R" Unit was previously shut down in 2018. Unit "R" is directly over the "kitchen" food service area and is a fire hazard. If the kitchen were to catch fire in

the middle of the night while all of us are locked into our "R" Unit, more than likely many of us would perish in the fire.

4. In early April of this year, the U.S.S. Aircraft Carrier Theodore Roosevelt reported that it had some serious cases of the Covid-19 virus on board the ship. On the initial request for docking to the U.S. Naval Command 37 sailors were infected. The next day on a Thursday the number of infections had grown rapidly to 71, the next day (Friday), the Covid-19 virus infections had reached 93. By the time the ship docked in Guam on Saturday, it had 230 infected soldiers. The Captain of the ship reported circumstances very similar to what we experience everyday here in the B.O.P. As of May 1st, over 955 men are now infected with the Coronavirus.

5. Many CDC experts, doctors, local, state, and federal officials admit that the current prisons and jails, which have restrictions on possession of alcohol based cleaning solutions and hand sanitizers (which the ship Theodore Roosevelt had plenty of), coupled with prohibition to utilize bleach for disinfectant purposes or sprayed for sanitation purposes, all

create an atmosphere for the inmates that is nothing more than a “petri-dish” for spreading the Covid-19 virus very rapidly, as we have already seen throughout state prisons and federal prison facilities.

6. The Chief Doctor, Ross MacDonald of Rikers Island on April 1<sup>st</sup>, sent an unsettling warning to law enforcement saying that it is unlikely that even “herculean” efforts by health professionals inside the jail can quell the rapid spread of the novel Coronavirus within its walls. Rikers, like many, if not all prisons is a public health disaster unfolding before our very own eyes, he wrote. On Twitter, the doctor urged the city of New York’s District Attorney to support the continued release of vulnerable inmates. A smaller inmate population-especially those senior and older prisoners age 55 and older have been most impacted with the outbreak of the virus. The deaths due to the Covid-19 virus outbreak have severely impacted those 60 years and older, with 70-80% of the deaths recorded by the CDC.

7. Currently, it is believed the B.O.P. has only released fewer than 2,000 inmates of the approximately 177,000 that currently exist in the B.O.P.

since the passage of The Cares Act, which was implemented to thin the prison populations and to especially release vulnerable prisoners in hopes of attaining a better "mitigation" environment in the B.O.P. There has been much push-back and controversies between the D.O.J. and the B.O.P., as well as Attorney General William Barr's offices as to exactly what the language interpretation of The Cares Act law set forth by Congress.

8. Of course all of these reasons no doubt were some of the reasons that the ACLU (American Civil Liberties Union) sued the B.O.P. about a month ago claiming the D.O.J./B.O.P. did not "go far enough" in releasing of vulnerable prisoners to Home Confinement prior to the invasion into the prison system of the Coronavirus, and this lawsuit was filed even before the latest debacle with the D.O.J./B.O.P. changing the criteria, and even adding to the Congress law of criteria for The Cares Act even though some prisoners had been selected to leave and had started quarantine, only to be brought back and told they would not be released due to changes made to the criteria. This of course only acerbates the continued criticism that not enough minimum, non-violent, low

recidivism inmates with potential health problems continue to be denied Home Confinement. In Marion, Ohio State Prison, neighboring Kentucky, 2100 out of 2400 inmates have been infected with the Covid-19 virus due to the circumstances and living conditions prevalent and noted in this letter. Ex-Presidential candidate and California Senator Kamala Harris blasted the Department of Justice and the Bureau of Prisons this morning demanding that they immediately release low risk non-violent prisoners before the Covid-19 kills even more prisoners, hoping to thin the prison population prior to more men dying and being infected. National statistics show that Nursing Homes, Meat Packing, and Prisons are where more infections are taking place, killing the most people from the Covid-19 virus. I must also note that the Covid-19 outbreak is all around us. Just in Lexington FCI, at the BOP, the outbreak has become significant in the past week, and they are only 100 miles from Ashland. The Green River Correctional Facility has had a catastrophic outbreak, the second largest thus far in Prisons data. In other BOP facilities throughout the U.S. infections have increased as much as 1,000 in one BOP alone, like it has in Lompoc, California, where it was noted that the institution was unprepared for the outbreak and

the Warden should be releasing low security inmates to Home Confinement.

9. Currently we are under a federal mandate **"NOT TO BE MOVED"** and we were literally confined to our cubicles for the month of April. It was on national news (April 30<sup>th</sup>) that at Gilmore B.O.P. men kept arriving and being moved into the facility even after the lockdown and now there are 127 inmates infected there with Coronavirus. But, again effective April 27<sup>th</sup>, Unicor selected 100 employees to go back to work at the Government Office Furniture Factory, where we were moved from our original dorms into the "R" Unit. Bringing together men from every dorm at Ashland FCI, even though we were supposed to be locked down without any movements in our cubicles/cells. There continues to be very little testing in the BOP, and today a S.D.N.Y. Federal Judge blasted Attorney General William Barr's failure to improve conditions at the BOP facilities around the country. At an E.D.N.Y. BOP facility only 24 tests have been conducted on the 2400 inmates, and 11 of those 24 tested were positive. The Federal Judge in Ohio ordered FCI-Elkton to identify the 837 "vulnerable" inmates and to develop a game plan on what was

to be done to either release them to Home Confinement, or transfer them, also noted that it was a violation of an inmate's "8<sup>th</sup> Amendment rights" of "cruel and unusual punishment" to keep inmates in such conditions, the same conditions that we are experiencing here in Ashland FCI. Absolutely no mitigation spacing measures are possible living four feet from the next inmate. Currently, the BOP has performed 2400 Covid-19 tests on inmates, and 70% of those test have come back "positive."

10. When the CDC listed the critical areas of individuals most susceptible to the Coronavirus, there were (5) critical areas in data relating in deaths and infections:

- A. Obesity
- B. Hypertension and heart related issues
- C. Asthma and lung related ailments
- D. Diabetes
- E. Immune-deficiencies



Based upon these critical criteria the current living conditions we reside in are not capable of meeting the CDC required/recommendation of spacing and mitigation measures due to the 4' aisles spacing and 4' clearance from bunk to bunk in the "R" Unit where over 100 men are currently housed in a unit that was previously shut down in 2018. It is situated right over top of the kitchen area and is a major problem of a fire hazard in the event one broke out at night while the men are locked away in the unit.

Since my sentencing your Honor I have taken many "ACE" classes in the B.O.P., all of which was recommended to me by my Counselor and Unit Team, and I continue to take courses as well which helps me to rehabilitate my life. I am currently signed up for the HVAC Program along with Math for Welders, Criminal Thinking, and the Smart Recovery NRDAP Drug Class. I have already taken Anger Management and Substance Abuse Class completing those successfully. I have had no setbacks and have also completed "drug education courses." I have lowered my security points upon doing so and am currently "programming" here at Unicor to earn good time credits towards my Half-Way House and Home Incarceration.

I have worked at Unicor Government Office Furniture Factory since coming to Ashland FCI, where I currently work as a CNC machine operator on the Edge Banding machine. At Unicor we ship world-wide with ISO-9001 International Certification. I have learned the SAP computer system which is the world leader in manufacturing/production facilities. I have been incident free since entering the B.O.P. and have an exemplary record. I have a Home Confinement Plan with a place to live and immediate employment upon my release.

The Coronavirus has now invaded 59 of the B.O.P. prisons (122 total) with devastating results on the prison population. With the current death toll of over 80,000 people with projections estimating 130,000 plus by August, and coupled with the knowledge that the B.O.P. is not capable of protecting those of us in the B.O.P. based upon CDC mitigating measures of spacing requirements, many more deaths will occur in the prison system. I take full responsibility for my crimes , but you did not sentence me to a "death sentence." I have some serious health issues with hypertension and "Hepatitis C" which currently makes me very susceptible to being infected with Covid-19 and has seriously

weakened my immune system. My family history has been one of many illnesses which are hypertension and diabetes from my father and mother, and I have lost a grandfather in his early 40's from heart disease. Currently my grandmother is diabetic and has already lost a foot to the disease and diabetes run in my family as well. I am not the same man that was sentenced in court years ago. I pray and humbly beseech you to consider in granting me this plea for Home Confinement where I will still have oversight of authorities to make sure I remain, drug free, crime free, and a productive citizen of society. The Covid-19 Coronavirus has not shown itself to be prejudice to whom it infects and kills. I am fearful, knowing the CDC criteria for individuals most affected and infected by the Covid-19, makes me a prime suspect with my health condition. This makes me very susceptible to being infected with the virus with a weakened immune system which I fear will prevent me from fighting off the infection of the Coronavirus. I pray and beseech you to seriously consider my humble plea to Home Confinement. I am absolutely no threat to the public in any way.

Your most humble servant I remain

James Nicholas Howington # 21128-074

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